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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/631,000	08/02/2000	Michael L. Blomquist	9015.135US01	8019
23552	7590	01/18/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			KOPPIKAR, VIVEK D	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/631,000	BLOMQUIST, MICHAEL L.	
	Examiner	Art Unit	
	Vivek D. Koppikar	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 3/28/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 21,22 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-20,23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/11/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Application

1. This office action is in response to the amendment filed on March 25, 2005. The examiner acknowledges the election by the application of claim 23. Therefore claims 21-22 and 25 will not be considered in this office action. The Information Disclosure Statement (IDS) statement filed on June 11, 2004 has been acknowledged. This office action will address the remarks filed on October 18, 2004 with regard to the office action mailed on September 12, 2003.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 6-20 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,788,669 to Peterson in view of US Patent Number 5,713,856 to Eggers.

The details of the rejection for these claims were set forth in the Office Action dated September 12, 2003 and are herein incorporated in this Office Action.

4. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson and Eggers as applied to Claim 3, above, and in further view of "Acute Health Solutions' DoseWatch to use Multum's MediSource" (hereinafter MediSource).

The details of the rejections for these claims were set forth in the Office Action dated September 12, 2003 and are herein incorporated in this Office Action.

Response to Arguments

5. Applicant's arguments filed October 13, 2004 have been fully considered but they are not persuasive. The arguments will be addressed in sequential order.

The applicants argue that each of the applied references, when considered individually, do not show some of the claimed limitations. However, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

To overcome the 35 USC 103 rejection the applicants must show why the invention produced from the combination of the applied references does not teach the claimed invention or they must argue against the motivation used to combine the references. The rejection cannot be overcome by simply stating that the individual references do not teach the claimed limitations and that therefore the combined invention does not teach the claimed invention.

The applicants argue against the Official Notice taken by the examiner with respect to the limitations of assigning identifiers to data sets. The applicants are simply traversing this Official Notice and do not give any reasons as to why they are traversing the Official Notice.

As per claims 1-3 and 6, applicants argue that the combination of references used will not result in the method that includes the act of entering a plurality of data items into a database to form a set of program data, at least some of the data items establishing parameters for controlling

operation of a medical pump. The applicants also argue that no combination of references will result in a method that includes the act of assigning a data key to the set of program data.

However, the examiner would like to point out that the combination of the Peterson and Eggers do in fact teach the above mentioned claimed limitations in claims 1-3 and 6, as set forth in the above referenced 35 USC 103 claim rejection. The applicants have not specifically pointed out why these references collectively do not show the claimed limitations of claims 1-3 and 6.

As per claims 7-9, the applicants argue that no combination of Peterson and Eggers “will result in an apparatus having a memory loaded with a database of program data records, at least some of the program data records including data items (i.e., operating parameters) for controlling operation of a medical pump, a data key identifying one of the data records, and a database management system programmed to exchange data with the pump.”

However, the examiner would like to point out that the combination of the Peterson and Eggers do in fact teach the above mentioned claimed limitations in claims 7-9, as set forth in the above referenced 35 USC 103 claim rejection. The applicants have not specifically pointed out why these references collectively do not show the claimed limitations of claims 1-3 and 6.

As per claims 10-15 and 23-24, the applicants argue that no combination of Peterson and Eggers “will result in an apparatus for batch programming of a medical pump having a processor configured to retrieve a set of program data (which includes at least some operating parameters) from a database and batch download the set of program data to a medical pump.”

However, the examiner would like to point out that the combination of the Peterson and Eggers do in fact teach the above mentioned claimed limitations in claims 10-15 and 21-25, as

set forth in the above referenced 35 USC 103 claim rejection. The applicants have not specifically pointed out why these references collectively do not show the claimed limitations of claims 10-15 and 21-25.

As per claim 16-20, the applicants argue that no combination of the claimed references will result in the claimed combination of acts that includes batch downloading a set of program data (which includes at least some operating parameters) to a medical pump.

However, the examiner would like to point out that the combination of the Peterson and Eggers do in fact teach the above mentioned claimed limitations in claims 10-15 and 21-25, as set forth in the above referenced 35 USC 103 claim rejection. The applicants have not specifically pointed out why these references collectively do not show the claimed limitations of claims 16-20.

As per claims 4-5, the applicants argue that no combination of Peterson, Eggers and MediSource discloses a set of program data, including parameters for controlling the operation of a pump. Nor does it disclose assigning a data key to the set of program data.

However, the examiner would like to point out that the combination of the Peterson, Eggers and MediSource do in fact teach the above mentioned claimed limitations in claims 4-5, as set forth in the above referenced 35 USC 103 claim rejection. The applicants have not specifically pointed out why these references collectively do not show the claimed limitations of claims 4-5.

Conclusion

6. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3626

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquire concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109. The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.


If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. The fax telephone number for this group is (703) 305-7687 (for official communications including After Final communications labeled "Box AF").

Sincerely,



Vivek Koppikar

8/16/2005


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER